

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Lone Wolf, Inc.

Date Application filed with the Town Clerk: December 2, 2004

Nature of request: Petitioner seeks a Special Permit to operate a Class II restaurant, serving alcoholic beverages, within 150 feet of a residential dwelling in a residential district, under Section 3.352.1 of the Zoning Bylaw.

Location of property: 63 Main Street, (Map 14A, Parcel 258, B-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on December 29, 2004, and January 5, 2005, and sent to abutters on December 21, 2004.

Board members: Zina Tillona, Tom Simpson and Barbara Ford

Submissions:

The applicants submitted the following documents:

- Management Plan
- Menus for breakfast, lunch and dinner
- Floor Plan of the interior of the restaurant showing kitchen, bathrooms and seating arrangement

The Planning Department submitted Memorandum #2005-01, which commented on zoning, dimensional requirements, parking, signs and lighting.

Site Visit: January 11, 2005

Board members Zina Tillona, Tom Simpson and Barbara Ford attended the site visit. They were met by the applicant, Robert Watson, owner of the Lone Wolf, and his attorney, Peter MacConnell. At the site visit the Board observed the following:

- The restaurant's location in the center of town, in a row of buildings that contains several other restaurants;
- The main dining room and the bar area;
- The area behind the bar where alcohol will be stored;
- The location of the kitchen.

Public Hearing: January 13, 2005.

The public hearing was held in the Town Room, Town Hall. Attorney Peter MacConnell presented the petition, and made the following points:

- Mr. Watson purchased the Lone Wolf during the summer of 2004;
- He would like to apply for a beer and wine license, but will apply for a full-alcohol license if a beer and wine license is not available;
- He needs a Special Permit because his business is located within 150 feet of the apartment in the Parish House of Grace Episcopal Church (a residential building in a residential zone);
- There will be no change to the exterior of the building;
- There will be no substantial change to the interior; the layout will be the same as it is now;
- Mr. Watson plans to serve breakfast, lunch and dinner;
- The operation of the restaurant will be as described in the Management Plan submitted with the application;
- The proposal meets the criteria of Section 10.38 of the Zoning Bylaw;
- The dinner menu reflects the type of clientele that Mr. Watson is expecting to serve.

Mr. Simpson asked if alcohol will be served only in conjunction with meals. Mr. Watson responded that alcohol will be served only with meals, but customers may have a drink while waiting for a meal.

Ms. Ford asked if meals will be served at the bar. Mr. Watson responded that meals will be served at the bar.

Bonnie Weeks, Building Commissioner, noted that the applicant had not applied to have a permit for live entertainment. She asked about the hours of operation. Mr. Watson responded that he planned to serve dinner from 5:30 to 9:30 p.m. on Thursday, Friday and Saturday nights. He did not plan on being open past 9:30 on a regular basis because he needs to be back at the restaurant to serve breakfast.

Ms. Weeks asked about private catering. Mr. MacConnell noted that the Management Plan states that the restaurant may be open until 11:00 p.m. to allow for private parties.

Mr. Simpson asked about lighting levels. Mr. Watson responded that the lighting levels may be lower for dinner than for the daytime meals. Ms. Weeks noted that if the lighting levels drop significantly, if there are no meals being served and if the aisles are indistinct, then the business falls into the category of a nightclub and becomes subject to different building code requirements.

Ms. Ford asked about outside lighting. The applicant stated that he does not plan to change the outside lighting. There is ample ambient lighting along the street so that more lighting on the building is not necessary.

Ms. Tillona noted that if service of alcohol is secondary to service of food and patrons are seated then the establishment would be considered a restaurant.

Mr. Simpson inquired about take-out service. Mr. Watson said that he intends to have take-out service, and to be served by Delivery Express, for breakfast and lunch but not for dinner. He also does not intend to have seasonal outdoor dining.

Ms. Ford inquired if the conditions should specify that take-out service should be for breakfast and lunch only. There was discussion of this question but the Board concluded that it would not include a condition regarding limitations on take-out service.

Mr. Mac Connell presented a written list describing how the proposal complies with the criteria of Section 10.38 of the Zoning Bylaw and he reviewed this list with the Board members, item by item.

Mr. Simpson MOVED to close the evidentiary portion of the public hearing. Ms. Tillona SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

At the Public Meeting, the Board discussed conditions that might be established with reference to this permit.

Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 The proposal is suitably located in the neighborhood and is compatible with existing uses because there are several other restaurants in the neighborhood, many of which serve alcohol.

- 10.382 The proposal would not constitute a nuisance because it will be closed by 11:00 p.m. and there will be no live entertainment, no exterior changes are being proposed and seasonal outdoor dining is not proposed.
- 10.383 The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because there is no physical change proposed that would affect abutters, vehicles or pedestrians.
- 10.384 Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the restaurant has been successfully operating in this space since the summer of 2004 and prior to that at least two other restaurants operated in the space and the facilities were adequate for their operation. There is no plan to change the interior space.
- 10.385 The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the restaurant will close by 11:00 p.m., the conditions will require that meals be served at all times that the restaurant is open, there will be no live entertainment and no seasonal outdoor dining. The restaurant has been operating without being detrimental or offensive since the summer of 2004.
- 10.386 The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because the signs have already been reviewed by the Design Review Board and no sign changes are being proposed and the business is located within the Municipal Parking Zone, under Section 7.4 of the Zoning Bylaw, and thus is not required to provide off-street parking.
- 10.389 The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the site is serviced by a public sewer and there will be no change in the trash removal and recycling presently conducted by the restaurant.
- 10.393 The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because there are no changes being proposed to the exterior lighting on the site.
- 10.395 The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because there are no changes proposed to the exterior of the building.

10.398 The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision

Tom Simpson MOVED to approve the application, with conditions. Barbara Ford SECONDED the motion. For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions to Lone Wolf, Inc. to operate a Class II restaurant, serving alcoholic beverages, within 150 feet of a residential dwelling in a residential district, under Section 3.352.1 of the Zoning Bylaw, at 63 Main Street, (Map 14A, Parcel 258, B-G Zone).

ZINA TILLONA

TOM SIMPSON

BARBARA FORD

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.

NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeal, based on the Management Plan approved on January 13, 2005, hereby grants a Special Permit to Lone Wolf, Inc. to operate a Class II restaurant, serving alcoholic beverages, within 150 feet of a residential dwelling in a residential district, under Section 3.352.1 of the Zoning Bylaw, at 63 Main Street, (Map 14A, Parcel 258, B-G Zone).

1. A full menu must be served from opening to closing.
2. The restaurant shall be managed according to the Management Plan approved on January 13, 2005.
3. Alcohol may only be served to seated patrons.
4. The total occupancy of the restaurant shall be 49 people, including staff.
6. No music shall be permitted that can be heard outside of the restaurant.
7. No live entertainment shall be permitted.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE